

158 RECORDING PLAYED TO THE JURY

You are about to (hear an audio recording) (hear and view an audiovisual recording). Recordings are proper evidence and you may consider them, just as any other evidence. Listen carefully; some parts may be hard to understand.

[You may consider the actions of a person, facial expressions, and lip movements that you can observe on videotapes to help you to determine what was actually said and who said it.]

[You will be provided a transcript to help you listen to the recording. If you notice any difference between what you heard on the recordings and what you read in the transcript(s), you must rely on what you heard, not what you read.]

COMMENT

Wis JI-Criminal 158 was approved by the Committee in February 2010. This revision was approved by the Committee in June 2022; it added to the comment.

This draft was based on an instruction adapted from The Pattern Jury Instructions for the 7th Circuit, 3.17. [Available online at http://www.ca7.uscourts.gov/Pattern_Jury_Instr/pjury.pdf.]

Effective January 1, 2010, SCR 71.01 (2) is amended to create new subsection (e):

(2) All proceedings in the circuit court shall be reported, except for the following:

...

(e) Audio recordings of any type that are played during the proceeding, marked as an exhibit, and offered into evidence. If only part of the recording is played in court, the part played shall be precisely identified in the record.

In the Matter of Amendment of Supreme Court Rule 71.01 Regarding Required Reporting of Court Proceedings. 2009 WI 104

If the jury requests that a recording be played back during jury deliberations, the jury should return to the courtroom and the recording should be played for the jury in open court. See State v. Anderson, 2006 WI 77, ¶¶30-31, 291 Wis.2d 673, 717 N.W.2d 74 (overruled in part on other grounds. See State v. Alexander, 2013 WI 70, ¶¶26-28, 349 Wis. 2d 327, 833 N.W.2d 126).

The Committee recommends that the court or the parties should make a record of exactly what was played during deliberations by noting the beginning and end times from the exhibit.

A helpful summary of the procedures that a trial judge should follow when an audio/visual recording has been received into evidence and played at trial and a jury requests to listen to or watch the recording during deliberations is provided in SM-9 When a Jury Requests to Hear/See Audio/Visual Evidence During Deliberations.